



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2011

Mr. John F. Healey, Jr.
Fort Bend County District Attorney
301 Jackson
Richmond, Texas 77469

OR2011-06224

Dear Mr. Healey:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 416684.

The Fort Bend County District Attorney's Office (the "district attorney") received a request for all discoverable information in the district attorney's file on a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.138, 552.140, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from an interested third party, The University of Texas Health Science Center at Houston (the "university"). *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for Attorney General ruling should or should not be released).

Initially, we must address the district attorney's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must as for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). You state the district attorney received the request for information on February 11, 2011. Accordingly, you were required to request a decision from this office by February 28, 2011. The envelope in which the district attorney's request for ruling was submitted bears a postmark date of March 1, 2011. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently,

we determine the district attorney failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 586 (1991). This office has held a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977). The district attorney claims section 552.108 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, no portion of the submitted information may be withheld under section 552.108 of the Government Code. You also raise sections 552.101, 552.130, 552.138, and 552.140 of the Government Code. Additionally, the university asserts an interest in the submitted information. Because sections 552.101, 552.130, 552.138, and 552.140 and a third party's interest can provide compelling reasons to withhold information, we will consider the applicability of sections 552.101, 552.130, 552.138, and 552.140, as well as the university's arguments against disclosure, to the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We find the submitted information was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1)(E) (definition of “abuse” includes indecency with a child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also* Penal Code §§ 21.11(a), .011(c)(1) (defining “child” for purposes of Penal Code sections 21.11, 21.011, and 21.021 as a person younger than 17 years of age). Therefore, the submitted information falls within the scope of section 261.201(a). As you do not state that the district attorney has adopted a rule that governs the release of this type of information, we assume that none exists. Given that assumption, we conclude the submitted information is generally confidential under section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (addressing predecessor statute).

The submitted information, however, contains a military veteran’s Department of Defense Form DD-214 that is subject to section 552.140 of the Government Code. Section 552.140 of the Government Code provides in part:

(a) This section applies only to a military veteran’s Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

(b) The record is confidential for the 75 years following the date it is recorded with or otherwise first comes into the possession of a governmental body. During that period the governmental body may permit inspection or copying of the record or disclose information contained in the record only in accordance with this section or in accordance with a court order.

(c) On request and the presentation of proper identification, the following persons may inspect the military discharge record or obtain from the governmental body free of charge a copy or certified copy of the record:

(1) the veteran who is the subject of the record[.]

Gov’t Code § 552.140(a), (b), (c). Section 552.140 provides that a military veteran’s DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). We note the submitted DD-214 form came into the district attorney’s possession after September 1, 2003. Section 552.140(c)(1) provides that a governmental body must release a discharge form to the veteran who is the subject of the record. *Id.* § 552.140(c)(1). Accordingly, we find the requestor, as the attorney for the veteran to whom the military discharge record pertains, has a right of access to his client’s DD-214 form under section 552.140(c)(1) of the Government Code.

Although the submitted information is generally confidential under section 261.201 of the Family Code, section 552.140 of the Government Code provides the requestor a right of access to the military discharge form. Therefore, there is a conflict between the confidentiality provision of section 261.201 and the right of access provision of section 552.140(c)(1). Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision, unless the general provision was enacted later and there is clear evidence the legislature intended the general provision to prevail. *See* Gov't Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref'd n.r.e.). In this instance, although section 261.201 generally makes records of investigations of alleged child abuse confidential, section 552.140 specifically permits release of military discharge records to certain parties. We, therefore, conclude the DD-214 form may not be withheld from this requestor under section 261.201. Thus, the district attorney must release the DD-214 form, which you have labeled Exhibit C, to this requestor under section 552.140(c)(1) of the Government Code. The remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

¹As our ruling is dispositive, we need not address the remaining arguments against disclosure of the remaining information.

Ref: ID# 416684

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)